

BEFORE THE ARIZONA STATE VETERINARY MEDICAL
EXAMINING BOARD

IN THE MATTER OF:) CASE No.: 22-25

JOHN MCWHIRTER, DVM
HOLDER OF LICENSE No. 3090) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND ORDER

FOR THE PRACTICE OF VETERINARY
MEDICINE IN THE STATE OF ARIZONA,

RESPONDENT.

The Arizona State Veterinary Medical Examining Board ("Board") considered this matter at its public meeting on May 18, 2022. John McWhirter, DVM ("Respondent") appeared on his own behalf for an Informal Interview that was held pursuant to the authority vested in the Board by A.R.S. § 32-2234(A). After due consideration of the evidence, the arguments and the applicable law, the Board voted to issue the following Findings of Fact, Conclusions of Law and Order ("Order").

FINDINGS OF FACT

1. Respondent is the holder of License No. 3090 and is therefore authorized to practice the profession of veterinary medicine in the State of Arizona.

2. On September 1, 2021, "Sadie," a 12-year-old female Labrador mix ("Patient") was presented to Respondent due to lethargy, increased thirst, anorexia, and vomiting. Complainant's mother also reported that the Patient seemed to be snoring more and breathing with more effort. Additionally, the Patient's eyes were weeping more than usual, the right rear leg was weak, and there was a small mass near the Patient's left nostril.

1 3. Respondent examined the Patient and found a weight = 52.6 pounds, a
2 temperature = 102.1 degrees, a heart rate = 120bpm, and a respiration rate =
3 pant; BCS 6/9. The mass near the left nostril was evaluated – scar, lipoma, tumor
4 (benign vs malignant); the right rear leg lameness was likely related to cranial
5 cruciate ligament issue; and Respondent could not appreciate any respiratory
6 issues at that time. He contacted the Complainant's mother to report his
7 findings. Although he did not find anything obvious, he suspected a metabolic
8 or physiological issue was going on and recommended blood work. The
9 Complainant's mother declined the blood work, but approved the steroid
10 injection. The Patient was administered Depo-Medrol 20mg SQ and was
11 discharged.

12 4. On September 3, 2021, the Patient was presented to the premises for
13 blood collection. The Patient had a weight = 53.8 pounds, a temperature =
14 102.1 degrees, a heart rate = 120bpm, and a respiration rate = pant.

15 5. On September 4, 2021, Respondent's colleague, called the
16 Complainant's mother with the blood work results. She explained the results
17 indicated a severe infection and due to the Patient's age, cancer was a
18 possibility. She stated that the presence of metamyelocytes in the periphery
19 was a cell type she rarely saw. She also stated that due to the low albumin
20 levels, there could be many issues occurring – chronic gastrointestinal disease,
21 hepatic disease, renal disease, genitourinary disease – therefore she
22 recommended an abdominal ultrasound to look for any abnormalities. She
23 recommended starting the Patient on two antibiotics:

24 a. Baytril 136mg, 15 tablets; give 1.5 tablets once a day for 10 days; and
25 b. Amoxi-Clav 625mg, 28 tablets; give 1 tablet twice a day for 14 days.

1 6. According to Complainant, Respondent's colleague advised that the
2 Patient's high WBC was due to either a serious infection or cancer, but that she
3 felt it was most likely cancer. She offered to start the Patient on antibiotics,
4 which was approved. Complainant picked up the medication and
5 administered them to the Patient.

6 7. Complainant stated that the Patient worsened over the next couple of
7 days, despite the medication being administered. Due to the belief that the
8 Patient had cancer, Complainant called an oncologist – she was advised that
9 she needed a definitive diagnosis and staging prior to bringing the Patient to
10 them.

11 8. On September 7, 2021, Complainant called Casa Grande Animal Hospital
12 to ask for fluids, anti-nausea medication, and discuss how to diagnose the
13 possible cancer. Respondent approved the request and stated that his
14 colleague recommended an abdominal ultrasound. Complainant stated that
15 she was upset because Respondent's colleague had not mentioned the
16 ultrasound. Respondent did not use this opportunity to relay the seriousness of
17 the blood results to Complainant and immediately suggest that the Patient be
18 brought in for re-evaluation. The Patient was dispensed:

- 19 a. LRS 1 liter (3), give 400 – 500mLs SQ;
- 20 b. IV drip set;
- 21 c. Needles; and
- 22 d. Cerenia 60mg, 4 tablets; 1 tablet every 24 hours.

23 9. On September 8, 2021, the Patient was presented to another colleague of
24 Respondent's for an abdominal ultrasound.

10. The Patient was diagnosed with a pyometra, blood was tested, and emergency surgery was performed.

11. Due to the Patient's worsening condition and persistent hyperglycemia, it was recommended that the Patient be transferred to an emergency facility. Complainant agreed to transfer the Patient.

6 12. Later that evening, the Patient was presented to Arizona Veterinary
7 Emergency & Critical Care Center for hospitalization and supportive care. The
8 Patient remained hospitalized until September 10, 2021. The Patient was
9 diagnosed with diabetic ketosis, azotemia, corneal ulcers and was likely septic
10 due to the length of time the Patient had the closed pyometra.

13. After due consideration of the matter, the Board concluded that
14. Respondent deviated from the standard of care by administering to the Patient
15. a long-acting steroid without having a diagnosis or at least a tentative
16. diagnosis. The Board also found that Respondent deviated from the standard
of care when he failed to tell the Complainant that, based upon the blood
results, the Patient needed to be immediately re-evaluated.

CONCLUSIONS OF LAW

18 14. The conduct and circumstances described in the Findings of Fact above,
19 constitutes a violation of **A.R.S. § 32-2232 (12)** as it relates to **A.A.C. R3-11-501**
20 **(1)** for failure to communicate to the pet owner on September 7, 2021 the
21 seriousness of the Patient's blood results and not recommending the Patient be
22 brought back in for re-evaluation.

15. The conduct and circumstances described in the Findings of Fact above, constitutes a violation of **A.R.S. § 32-2232 (11)** Gross negligence! for administering a long-acting steroid to a Patient exhibiting symptoms of illness without a diagnosis or tentative diagnosis which caused unnecessary suffering.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is
ORDERED that Respondent's License, No. 3090 be placed on **PROBATION** for a
period of one (1) year, subject to the following terms and conditions that shall
be completed within the Probationary period. These requirements include
twelve (12) total hours of continuing education (CE) and a civil penalty
detailed below:

1. IT IS ORDERED THAT Respondent shall provide written proof satisfactory to the Board that he has completed six (6) hours of continuing education (CE); hours earned in compliance with this order shall not be used for licensure renewal. Respondent shall satisfy these six (6) hours by attending CE in the area of reproductive diseases. Respondent shall submit written verification of attendance to the Board for approval.

2. IT IS ORDERED THAT Respondent shall provide written proof satisfactory to the Board that he has completed three (3) hours of continuing education (CE); hours earned in compliance with this order shall not be used for licensure

¹ A.R.S. § 32-2201(9) defines "gross negligence" as the treatment of a patient or practice of veterinary medicine resulting in injury, unnecessary suffering or death that was caused by the carelessness, negligence or the disregard of established principles or practices.

1 renewal. Respondent shall satisfy these three (3) hours by attending CE in the
2 area of pharmacology. Respondent shall submit written verification of
3 attendance to the Board for approval.

4 **3. IT IS ORDERED THAT** Respondent shall provide written proof satisfactory to
5 the Board that he has completed three (3) hours of continuing education (CE);
6 hours earned in compliance with this order shall not be used for licensure
7 renewal. Respondent shall satisfy these three (3) hours by attending CE in the
8 area of client communication. Respondent shall submit written verification of
9 attendance to the Board for approval.

10 **4. IT IS FURTHER ORDERED THAT** Respondent shall pay a civil penalty of one
11 thousand five hundred dollars (\$1500) on or before the end of the Probation
12 period. This total amount is comprised of \$1000 for the gross negligence
13 violation and \$500 for the client communication violation. The civil penalty shall
14 be made payable to the Arizona State Veterinary Medical Examining Board
15 and is to be paid by cashier's check or money order.

16 **5. All continuing education to be completed for this Order shall be**
17 **pre-approved by the Board.** Respondent shall submit to the Board a written
18 outline regarding how he plans to satisfy the requirements in paragraph 1, 2,
19 and 3 for its approval within sixty (60) days of the effective date of this Order.
20 The outline shall include **CE course details** including, **name, provider, date(s),**
21 **hours of CE** to be earned, and a **brief course summary**.

22 6. Respondent shall obey all federal, state and local laws/rules governing
23 the practice of veterinary medicine in this state.

24 7. Respondent shall bear all costs of complying with this Order.

8. This Order is conclusive evidence of the matters described and may be considered by the Board in determining an appropriate sanction in the event a subsequent violation occurs. In the event Respondent violates any term of this Order, the Board may, after opportunity for Informal Interview or Formal Hearing, take any other appropriate disciplinary action authorized by law, including suspension or revocation of Respondent's license.

NOTICE OF APPEAL RIGHTS

Respondent is hereby notified that he has the right to request a rehearing or review of the Order by filing a motion with the Board's Executive Director within 30 days after service of this Order. Service of the Order is effective five days after the date of mailing to Respondent. See A.R.S. § 41-1092.09. The motion must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R3-11-904. If a motion for rehearing or review is not filed, the Board's Order becomes final 35 days after it is mailed to Respondent. Respondent is further notified that failure to file a motion for rehearing or review has the effect of prohibiting judicial review of the Order, according to A.R.S. § 41-1092.09(B) and A.R.S. § 12-904, et seq.

Dated this 27th day of June, 2022.

Arizona State Veterinary Medical Examining Board
Jim Loughead
Chairman

By: Victoria Whitmore
Victoria Whitmore, Executive Director

25 Original of the foregoing filed this 27th day of June, 2022
with the:

1
2 Arizona State Veterinary
3 Medical Examining Board
4 1740 W. Adams St., Ste. 4600
5 Phoenix, Arizona 85007
6

7 Copy of the foregoing sent by certified, return receipt mail
8 this 27th day of June, 2022 to:

9
10 John McWhirter, DVM
11 Address on file
12 Respondent
13

14 By: V. Whitmore
15 Board Staff
16
17
18
19
20
21
22
23
24
25